

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

NATHAN EVAN GARDNER,	:
	:
Petitioner,	:
	:
v.	5:06-cr-60 (HL)
	:
UNITED STATES OF AMERICA,	:
	:
Respondent.	:
	:
	:

ORDER

Before the Court is Petitioner's "Verified Notice of Non-Consent" (Doc. 41).

In this Notice, Petitioner objects to the Court's referral of his Motion to Vacate to a magistrate judge. The Court therefore treats the Notice as a Motion for Reconsideration of the Order of referral and denies the Motion for the reasons set out below.

Petitioner cites 28 U.S.C. § 636(c) for the proposition that this Court may only refer the Motion to Vacate if he consents to the referral, which he has not done. The subsection that Petitioner cites, however, addresses the procedure for referring a case to a magistrate judge in civil proceedings. It does not govern requests for posttrial relief in criminal cases. See 28 U.S.C. § 636(c). In contrast, the subsection applicable to this case provides that a district court judge may "designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the

disposition . . . of . . . applications for posttrial relief.” Id. § 636(b)(1)(B). The statute does not require a court to obtain the consent of the parties. Id. After the magistrate judge submits his proposed findings and recommendations, Petitioner will have the opportunity to file objections. Id. § 636(b)(1). This Court will then make the final ruling on Petitioner’s Motion.

Accordingly, there was no error in the March 25, 2008 Order referring the case to Magistrate Judge Faircloth. Petitioner’s Motion for Reconsideration is therefore denied, and Magistrate Judge Faircloth will conduct proceedings with regard to the Motion to Vacate pursuant to 28 U.S.C. § 636 and Local Rule 72-1.

SO ORDERED, this the 4th day of April, 2008.

s/ Hugh Lawson
HUGH LAWSON, Judge

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